

### **REMARKS**

Claims 1-16, 19-46, 48-97, and 99-105 are now pending in the application. Claims 19, 73, and 87 are amended by this amendment and Claim 47 is canceled. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **APPLICANTS INITIATED INTERVIEW REQUEST**

Applicants file herewith an Interview Request.

Applicants attempted to contact the Examiner prior to filing this Request for Continued Examination without success. Prior to examination and consideration of the amended claims, Applicants request an interview with the Examiner to discuss the pending claims and the chance to file a further preliminary amendment for consideration prior to the examination of the presently pending claims and the mailing of any office actions.

### **SUPPORT FOR CLAIM AMENDMENTS**

Claims 19, 73, and 87 are amended by this amendment. The specific amendments are shown in the following Claims Appendix. Support for the amendments to the claims can be found in the issued U.S. Pat. 5,868,675 at least as noted below.

Support for the amendments to Claim 19 can be found where support for claim 47 was found, including at least col. 4, Ins. 16-31 and also col. 7, Ins. 54-60.

Support for the amendments to Claims 73 and 87 can be found at least at col. 4, Ins 51-64; col. 7., Ins 47-52; col. 10, Ins 31-60; col. 11, Ins. 14-20; col. 16, Ins. 61-67; and

claims 1, 7, 8, 13-16.

**REJECTION UNDER 35 U.S.C. § 102 AND § 103**

Claims 19-30, 38-40, 46-48, 51, 52, 55-56, 59-61, 66, 67 and 69-72 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Allen (U.S. Pat. No. 4,945,914). Claims 31-33, 49, 50, 87-97 and 103-105 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen (U.S. Pat. No. 4,945,914) in view of Strohl Jr. et al. or Van Steenwyk et al. Claims 99-102 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Allen ('914) in view of Strohl Jr. et al or Van Steenwyk et al as applied to Claim 87 above, and further in view of Codrington. Claims 34-37, 41-43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (4,945,914) in view of Lewin. Claims 44, 45, 53, 57, 58, 65 and 68 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Allen ('914). Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen ('914) in view of Codrington. Claims 73-86 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Allen ('914) in view of Codrington and Strohl Jr. et al or Van Steenwyk et al. These rejections are respectfully traversed.

Applicants have previously argued the distinction of the pending claims in light of the cited art, and submit that the claims as pending are patentable at least for the reasons previously argued. Nevertheless, to expedite the examination of the present application, Applicants have amended the claims as discussed in detail below and as supported in the issued patent as noted above.

Applicants have amended Independent Claim 19 to include now canceled dependent Claim 47. Applicants respectfully submit that amended Independent Claim 19 is directed to an active member that can be tracked with a tracking system as previously discussed with the Examiner. Applicants respectfully submit that the art cited in the rejections, including Allen, do not anticipate or fairly render obvious an active member and a tracking system operable to determine a position of at least the second tracking reference structure and the active member. Accordingly, Applicants respectfully submit that Independent Claim 19 and the claims that depend directly or indirectly therefrom are in condition for allowance.

Independent Claim 73 has been amended to recite, "a display operable to display the real-time position of the active member in the image reference frame based on the tracked position of the active member from the tracking system." Applicants respectfully submit that a tracking system operable to track the position of an active member and a display operable to display the real-time position of the active member based on the tracked position is not anticipated or fairly rendered obvious by the art cited in the rejections. In particular, Applicants respectfully submit that the art cited in the rejections does not anticipate or fairly render obvious an active member that can be displayed relative to image data. Applicants respectfully submit that at least Codrington requires imaging an instrument to illustrate a location of the instrument rather than a tracking system operable to track an instrument and a display operable to display the real-time position of the active member.

Further, Independent Claim 87 has been amended to recite, "capturing a first image data . . . correlating the position of the first reference structure in the image

reference frame in the first image data with the position of the second reference structure in the patient reference frame and tracking an active member in the patient reference frame for display relative to the image reference frame of the first image data.” Again, Applicants respectfully submit that the cited art does not anticipate or fairly render obvious a method as recited in Independent Claim 87 including capturing a first image data and correlating the position of the first reference structure in the first image data and the position of the second reference structure in the patient reference frame and tracking an active member for display relative to the first image data. Applicants respectfully submit that the cited art, including Codrington, does not anticipate or fairly render obvious tracking an active member for display relative to the first image data. Rather, Codrington at least requires continuous imaging to illustrate the position of an instrument in image data.

Accordingly, Applicants respectfully submit that each of the presently pending claims are in condition for allowance and request that the present application be passed to issuance at the Examiners convenience.

#### **ALLOWABLE SUBJECT MATTER**

The Examiner states that Claims 1-16 and 62-24 are allowable over the prior art of record.

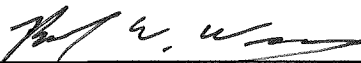
Applicants thank the Examiner for the indication of allowability of Claims 1-16 and 62-64.

## CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By:   
Richard W. Warner, Reg. No. 38,043  
Michael L. Taylor, Reg. No. 50,521

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

RWW/MLT/srh